

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

VICTOR CAMARGO JUAREZ,

v.

WALMART, INC.,

Plaintiff,

Defendant.

Case No. 3:21-cv-00525-MMD-CSD

ORDER

Pro se Plaintiff Victor Camargo Juarez filed the Complaint in this action on December 30, 2021. (ECF No. 1-1.) However, a year and a half later, Plaintiff has failed to properly serve the sole Defendant in this case, Walmart, Inc., and has failed to comply with the Court's prior orders directing Plaintiff to submit a revised USM-285 form or complete service on an appropriate Walmart agent. (ECF Nos. 17, 18.) For these reasons, and the reasons discussed below, the Court will dismiss this action without prejudice.

Plaintiff was allowed to proceed *in forma pauperis* and initially submitted an USM-285 form that listed "Walmart" on Kietzke Lane as the entity for service. (ECF Nos. 3, 9.) The general manager of the Walmart store was served by the U.S. Marshal on January 24, 2022. (ECF No. 9.) However, Nevada does not allow for service on general or mid-level management and requires service on "the president, board chairman, and other 'superior officers'" of the corporation. See *Mich. Geosearch, Inc. v. Prosperity Bancshares, Inc.*, 130 Nev. 1217 (2014); see also *Saavedra-Sandoval v. Wal-Mart Stores*, 245 P.3d 1198, 1201 (Nev. 2010). Although Fed. R. Civ. P. 4(h) permits service on a corporation by delivering a copy of the summons and complaint to an officer and managing or general agent of the corporation, federal courts "view managing agents and/or general managers as employees who have some substantial authority within a

1 corporation”—a general store manager lacks this substantial management authority and
 2 does not suffice for service. See *Schmall v. Prudhomme*, Case No. 18-cv-02469 W
 3 (MDD), 2019 WL 3997333, at * 3 (S.D. Cal. Aug. 23, 2019) (citing *Garabedian v. Griffin*
 4 *Steel & Supply Co.*, 340 F.2d 478, 479 (9th Cir. 1965); *Bridgeport Music, Inc. v. Rhyme*
 5 *Syndicate Music*, 376 F.3d 615, 624 (6th Cir. 2004); *Aussieker v. M&S Green-Power*
 6 *Energy, Inc.*, Case No. 2:18-cv-03234-JAM-AC, 2019 WL 2183783, at *3 (E.D. Cal. May
 7 21, 2019)).

8 Since service was insufficient, the Court issued a minute order on April 10, 2023,
 9 directing Plaintiff to submit a revised USM-285 service form that identified the proper party
 10 for service by May 10, 2023.¹ (ECF No. 17.) The Court also pointed Plaintiff to the Nevada
 11 Secretary of State’s website to find Walmart’s registered agent in Nevada and the Clerk
 12 of Court sent Plaintiff another USM-285 form. (*Id.*) When Plaintiff failed to submit a revised
 13 form by that deadline, the Court issued another minute order on May 12, 2023, cautioning
 14 Plaintiff to submit the revised USM-285 form or complete service on an appropriate
 15 Walmart agent by May 29, 2023, or face dismissal of his case for insufficient service.
 16 (ECF No. 18.) See Fed. R. Civ. P. 4(m); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
 17 Cir. 1986). To date, no proof of service or revised USM-285 form has been filed.

18 District courts have the inherent power to control their dockets and “[i]n the
 19 exercise of that power, they may impose sanctions including, where appropriate . . .
 20 dismissal” of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir.
 21 1986). A court may dismiss an action based on a party’s failure to obey a court order or
 22 comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
 23 (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep
 24 court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)
 25 (dismissal for failure to comply with court order). In determining whether to dismiss an
 26 action on one of these grounds, the Court must consider: (1) the public’s interest in the
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28 ¹The Court previously set aside the Clerk’s entry of default as to Walmart, Inc., which was entered in error, because service was insufficient in this case. (ECF Nos. 16, 17.)

1 expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk
 2 of prejudice to Defendant; (4) the public policy favoring disposition of cases on their
 3 merits; and (5) the availability of less drastic alternatives. See *In re Phenylpropanolamine*
 4 *Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

5 The first two factors, the public’s interest in expeditiously resolving this litigation
 6 and the Court’s interest in managing its docket, weigh in favor of dismissal. The third
 7 factor, risk of prejudice to Defendant, also weighs in favor of dismissal because a
 8 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
 9 ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522,
 10 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of cases on
 11 their merits—is greatly outweighed by the factors favoring dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can
 13 be used to correct the party’s failure that brought about the Court’s need to consider
 14 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
 15 that considering less drastic alternatives *before* the party has disobeyed a court order
 16 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
 17 Cir. 2002). Courts “need not exhaust every sanction short of dismissal before finally
 18 dismissing a case, but must explore possible and meaningful alternatives.” *Henderson*,
 19 779 F.2d at 1424. Because this action cannot realistically proceed until and unless
 20 Plaintiff properly serves the sole Defendant in this case, the only alternative is to enter a
 21 third order setting another deadline for service. But the reality of repeating ignored orders
 22 is that it often only delays the inevitable and squanders the Court’s finite resources. The
 23 circumstances here do not indicate that this case will be an exception because there is
 24 no showing that Plaintiff needs additional time or evidence that he did not receive the
 25 Court’s prior orders. Setting a third deadline is not a meaningful alternative in these
 26 circumstances. Thus, the fifth factor also favors dismissal.

27 Having thoroughly considered these dismissal factors, the Court finds that they
 28 weigh in favor of dismissal.

It is therefore ordered that this action is dismissed without prejudice based on Plaintiff's failure to properly serve Defendant Walmart, Inc., in compliance with the Court's April 10, 2023, and May 12, 2023, orders.

The Clerk of Court is directed to enter judgment accordingly and close this case. No other documents may be filed in this now-closed case. If Plaintiff wishes to pursue his claims, he must file a complaint in a new case.

DATED THIS 2nd Day of June 2023.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE